



CONNECTICUT
**TRIAL
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Raised Bills 416, 5598
Public Hearing: 3-11-16

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 11, 2016

RE: **TESTIMONY ON:**
416 AA VALIDATING CERTAIN STIPULATIONS TO EXTENSIONS OF TIME FOR
THE CLAIMS COMMISSIONER TO DISPOSE OF CASES and
5598 AA VALIDATING THE DISPOSITION OF CERTAIN CLAIMS BY THE CLAIMS
COMMISSIONER

CTLA supports the concepts raised in bills 416 and 5598. We strongly encourage the Judiciary Committee to adopt legislation eliminating the defect in cases where a waiver of the two year time limit was signed after the two years had already passed, and all other procedural defects that have arisen out of the operation of the Claims Commission over the last several years. We are also aware that attorneys and claimants affected by the current situation with the Claims Commission (including various members of our organization) have or will testify here. Some of them have submitted written testimony in support of their individual requests for relief. We support their efforts—including their requests for individual relief on behalf of the claimants they represent-- and ask that you look favorably on their requests.

We respectfully submit the following comments regarding the recent delays and overall functioning of the Claims Commission.

The Claims Commission is Connecticut's oversight agency with the important task of hearing our citizen's complaints, and determining when it is just and equitable to allow the State to be sued. The Claims Commission is often described as the "Conscience of the State." This assembly is the only oversight for the Claims Commission. In essence, you are the compass of our conscience. The changes we suggest are designed to put the Claims Commission back on course, to accelerate the protracted process of administering these claims, to provide transparency for claimants, the respondent, their counsel and the general public, and provide you with critical information necessary to ensure the Claims Commission remains focused on its mission and improves its functioning.

The backlog of cases pending in the Claims Commission include many cases that have been pending four years or more, and some that are five years and older. Most involve serious injury or death. In these cases, the remedy sought from the Claims Commission is the authorization of a lawsuit. The current delay in the Claims Commission causes harm in many ways, both to the claimant and to the State: First, it delays a timely resolution of the case, "justice delayed is justice denied."



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Second, the long passage of time damages both the claimants' and the respondents' abilities to present their cases in court. Memories can fade, witnesses disappear, records are lost or destroyed, with the result that the rights of both sides to a fair trial are compromised.

Third, it delays compensation to those persons for whom the law allows it.

Finally, it denies all claimants the closure that resolution provides: winning, settling and losing a claim are all preferable outcomes to an interminable wait while nothing happens. It is simply unfair to claimants that their cases have languished for multiple years. This assembly can and should correct this injustice.

With the recent resignation of the Commissioner, the problem of dealing with the backlog takes on greater significance and urgency. The new Commissioner must not only acclimate to the new role, but must also become acquainted with multiple cases deserving of immediate action. This will take time. Many cases appear before this assembly because there is a question about the adequacy or timeliness of waivers of existing time limits. Currently, many of the waivers now in effect expire at the end of 2016. Of great concern is whether a new Commissioner can issue final decisions in these cases during the next nine months. It may be that many of these cases will require a further waiver, extending the deadline at least until the end of 2017.

Given these circumstances, where claimants who have already waited four or five years for an administrative decision now may face an additional delay of up to two years, justice and equity now require that those citizens be given an authorization to file suit in Superior Court and have their claims adjudicated in the Superior Court. Granting authorizations to sue to the individuals seeking this remedy will immediately alleviate some of the current administrative backlog. In addition, CTLA supports validating the stipulations and dispositions that are currently the subject of these two bills. We also urge this Committee to authorize and empower the new Claims Commissioner to enlist the aid of qualified Special Masters to assist in the review and recommend resolutions of the cases on this very aged docket, so that the Claims Commissioner can take immediate action to address those cases. We encourage this Committee to explore with any Claims Commission appointee, his or her plan to address the backlog of cases, and to provide to the Claims Commission the tools and resources to fairly adjudicate the backlog, as soon as possible.

We also urge the following changes:

- **Amend §4-154, or add another section to define specific time limits for decisions on discovery motions and dispositive motions (motions to dismiss, motions for summary judgement).** Some claims before you have lagged for over three years waiting for decisions on motions. Implementing specific time limitations for decisions on motions provides clear directives to the Claims Commissioner and the litigants. The Superior Court has a four-month rule—mandating 120 days to decide motions that are fully submitted. The rule works well there, and some variant of it should be adopted for the Claims Commission.
- **Maintain an electronic docket with computerized tracking of cases filed, status of case, type of case, etc.** Case tracking will assist claimants, their counsel, the respondent, its counsel and the general public. Computerized case tracking makes it easier to identify where delay occurs, and allows all concerned to better focus resources to remedy the problem. It should provide information on new



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claims, pending claims, and disposed claims, so that the backlog can be monitored and resources appropriately allocated. The transparency this affords is also beneficial for the public confidence in the Claims Commission system.

- **Amend §4-159a to include a more detailed annual report by the Claims Commissioner.** The Commissioner should be required to provide the assembly with a report that not only lists older cases, but provides details on those cases (including length of time pending, number of days overdue on decisions, reason for waivers of time, etc.). Such a report will provide the assembly with better data on the performance of the Claims Commission, and help it perform its oversight function.
- **Amend §4-159a to include Assembly review of all cases more than two and one half (2 ½) years old that have not been disposed of. In those cases, if there has been undue delay which has not been caused by the claimant, and the claimant requests an authorization to sue, there shall be a presumption that such a request is reasonable and necessary, and suit shall be authorized.**

It is our understanding that there is currently a plan in place and funding for a computer system for the Claims Commission. This system should make the pleading process more efficient, and permit tracking of new and disposed claims. It will provide transparency for the public and a database so that the General Assembly can monitor progress. In the Connecticut Superior Court system, claim data is easily retrievable by all parties seeking to check the progress of their cases. The information is also available to the general public, and to the Commissioner. Implementing a Claims Commission Electronic Docket with the same capabilities, allows the Claims Commissioner to readily provide this information about cases to the assembly, which can then utilize the information to provide the necessary oversight and guidance.

We urge the committee to grant the relief requested to the individuals who testified before you today and to pass bills 416 and 5598, possibly with some small amendments. Thank you.

Respectfully submitted,

Rosemarie Paine, President